IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3014 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIMBHAI KASIM ALIKHAN

Versus

VINUBHAI BHIKHABHAI NAI

Appearance:

MR MHM SHAIKH for Petitioner

NOTICE SERVED for Respondent No. 1

MR KP RAVAL, APP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 11/04/2000

ORAL JUDGEMENT

1. This is an application by the original accused in criminal Case No.621/99, for quashing the complaint filed against him by the respondent no.1-complainant, and for quashing the process issued by the learned Magistrate on the basis of the said complaint.

2. It is pertinent to note that the first respondent is absent though served.

3. The first respondent as complainant has filed the instant complaint alleging that the petitioner-accused had committed offences under sections 506(2), 504, 420 and 406 of IPC. It is also pertinent to note that this complaint was filed on 18th February 1999. The sum and substance of the complaint is that as per the complainant there were certain transactions between the complainant and the accused, whereby on account of specific refusal on the part of the accused to pay up the due amount, on 15th February 1999 the accused has committed the alleged offences.

4. The main contention of the learned counsel for the petitioner-accused is that this very complainant had at an earlier point of time filed another complaint under section 138 of the Negotiable Instruments Act, on the very same set of facts as in the present complaint. The earlier complaint was filed on 19th April 1997, resulting in Criminal Case No.3234/97, which was heard and decided by judgement of the learned JMFC dated 15th July 1998. This complaint filed by the complainant was dismissed on merits, and the accused was acquitted. No revision or appeal has been preferred from this judgement of the learned JMFC. It is, therefore, contended that the instant complaint alleging offences against the accused under sections 506(2), 504, 420 and 406 of IPC is merely a second chance taken to harass the accused, on the very same set of facts.

5. The earlier complaint filed by the present complainant, under section 138 of the Negotiable Instruments Act is at Annexure-B to the present petition, and the judgement of the learned JMFC, Palanpur in the very same complaint is at Annexure-C to the petition.

6. On the perusal of the said complaint and the said judgement, it becomes obvious that the instant complaint has been filed only by way of second chance to continue the harassment of the present accused. It is also pertinent to note that the earlier complaint under section 138 of the Negotiable Instruments Act was dismissed and the accused was acquitted by judgement dated 15th July 1998, whereas the present complaint is filed on 18th February 1999.

7. The present complaint is also to be seen in the context of the facts which are apparent on the face of the complaint, that the same makes absolutely no mention of the earlier complaint, nor is any attempt made to distinguish the earlier complaint from the present complaint. It is obvious that another complaint based on

the same set of facts, particularly where the first complaint has led to the acquittal of the accused, would amount to an abuse of the process of law.

8. On the facts and circumstances of the case I am satisfied that the instant complaint requires to be quashed as also the process issued by the learned Magistrate on the basis of the said complaint. It is so held and directed. Consequently this revision is allowed and rule is made absolute accordingly.

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